

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. Appln. No. 10/092,591

REMARKS

Claims 1-17 are all the claims pending in the application. Claims 1-17 presently stand rejected.

The Drawings are objected to under 37 C.F.R. § 1.81, presumably for failing to indicate that Figs. 16-18 are --Prior Art--. Applicants attend to this correction in the attached corrected Drawings.

The Drawings are objected to under 37 C.F.R. § 1.83(a) because the features claimed in claim 13 are not shown. The objection does not provide any detail and thus does not explain which features in particular are not illustrated in the drawings. Since claim 13 is also rejected under § 112 as being indefinite with regard to the airway case, the pair of holding members and the pair of support members, it appears that the Examiner is asserting that these are the features which are not properly illustrated. However, these features of claim 13 are illustrated in the drawings as explained below.

Specifically, Fig. 14 illustrates a pair of anti-fogging film cases 45. As discussed on page 21 of the specification, an anti-fogging film case 45 is disposed outside **each** of the anti-fogging films 44.<sup>1</sup> Still further, two films 44 are illustrated in Fig. 14 and the specification describes a thin film being formed on each of the lateral sides of the case 41. Thus, it is clear that if two films are provided, and a case 45 is provided for each of these two films, a pair of cases 45 are provided. As noted by the Examiner and stated in this portion of the specification, the cases 45

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<sup>1</sup> See lines 2-5 of page 21.

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serve as holding members. Hence, the drawings (particularly Fig. 14) and the specification adequately describe "a pair of holding members".

With respect to the pair of supporting members, the paragraph bridging pages 21 and 22 of the specification describes the light-emitting section case 51 and the light-receiving section case 54, each serving as a support member. These features are illustrated in Figs. 12, 13 and 15. Hence, "a pair of support members" is adequately illustrated in the drawings.

With respect to the airway case, an airway case 41 is illustrated in Figs. 12-15. In particular, Fig. 14 and the final paragraph on page 20 describe the airway case having lateral sides that are opened and being formed in a rectangular parallelepiped shape.<sup>2</sup>

In view of the foregoing, the objection to the drawings under 37 C.F.R. § 1.83(a) should be withdrawn.

Claims 13-17 are rejected under 35 U.S.C. § 112, second paragraph. With respect to these rejections, the above explanations should adequately show why the claims are definite. In particular, the airway case is adequately described and shown as providing a path for respiratory gas from the nose, to which holding members and supporting members are attached. Moreover, as to the distinction between the holding members and the supporting members, these features are clearly distinguishable based on Figs. 14 and 15 and the specification as discussed above. Thus, the rejection under § 112 should be withdrawn.

Claims 1-10 are rejected under 35 U.S.C. § 102(b) as being anticipated by Dietz (5,005,571).<sup>3</sup>

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<sup>2</sup> See lines 15-17 of page 20.

### **Analysis of Prior Art Rejections**

Claim 1 is directed to a sensor for measuring the carbon dioxide in respiratory gas. This is facilitated by a support member which has a respiratory path formed therein. The light-emitting element and the light-receiving element are opposed to each other along a single optical axis. The respiratory path crosses over this optical axis. Thus, allowing for the measurement of the respiratory gas.

Dietz on the other hand does not provide these features. Although a light-emitting element is provided, it is completely unrelated to the respiratory path formed in a support member. Rather, the sensors are provided with the inhalation sensor 26. In addition, there is no teaching of a light-receiving element. Still further, there is no teaching or suggestion that a support member which supports such light elements also has a respiratory path therein, so that the respiratory path crosses over the optical axis.

Thus, claim 1 is not anticipated by Dietz.

Claims 2-9 and 11 are patentable for at least the same reasons as claim 1, by virtue of their dependency therefrom.

Claim 10 is also directed to a sensor for measuring the carbon dioxide in respiratory gas. This claim is patentable for similar reasons to claim 1. Namely, Dietz fails to teach or suggest the structural relationship between an optical axis of light emitting and receiving elements and the respiratory flow path in the support member which supports these light elements.

Thus, claim 10 is not anticipated by Dietz.

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<sup>3</sup> It is noted that no prior art rejections have been applied to claims 13-17. Therefore, these claims are believed patentable once the rejections under § 112 are withdrawn.

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Claim 12 is patentable for at least the same reasons as claim 11, by virtue of its dependency therefrom.

As already noted, no prior art rejections have been applied to claims 13-17 and thus these claims are presumably patentable once the indefiniteness rejections have been withdrawn.

**Request for Interview**

As indicated in the attached Applicant Initiated Interview Request Form, Applicants kindly request an Interview with the Examiner to discuss the above noted distinctions between the prior art and the claimed invention. As such, the Examiner is requested to contact Applicants' representative at the telephone number listed below to schedule an interview.

**Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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Ellen R. Smith  
Registration No. 43,042

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

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**AMENDMENTS TO THE DRAWINGS**

Applicants are enclosing herewith annotated marked-up drawings in which Figs. 16-18 have been amended to include the legend --Prior Art--. Additionally, Applicants are resubmitting herewith fourteen (14) sheets of replacement drawings that were originally filed on May 14, 2002, which are intended to replace the informal drawings filed on March 8, 2002.

Attachment: Replacement Sheets